

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## I. INTRODUCTION

Currently before the Court is Plaintiff's Motion to Compel Discovery. *See* Pl.'s Mot. to Compel; Def.'s Resp. to Mot. to Compel, Dkt. Nos. 49, 51. Having reviewed the motion, opposition thereto, the relevant legal authority, and the record of the case, the Court will grant the motion. The reasoning for the Court's decision follows.

## II. BACKGROUND

Plaintiff William T. Whitman was a policyholder of the universal life insurance policy (“Form 94030” or “the policy”) administered by Defendant State Farm Life Insurance Company. He alleges that Defendant made unauthorized deductions from his life insurance policy and

1 concealed factors inconsistent with his policy's terms to calculate his monthly Cost of Insurance  
 2 ("COI") rates in violation of Washington law. *See* Second Am. Compl. ("SAC") at ¶¶ 80, 87, Dkt.  
 3 No. 38. Plaintiff filed this putative class action suit against Defendant on behalf of a class of  
 4 Washington Form 94030 policy owners on October 30, 2019. *Id.* at ¶ 5. He asserts claims for  
 5 breach of contract, conversion, declaratory and injunctive relief, and unfair and deceptive practices  
 6 in violation of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.* *Id.* at ¶¶ 58–89.

7 Plaintiff served Defendant with his First Request for Production of Documents on June 1,  
 8 2020. *See* Declaration of Joseph M. Feierabend ("Feierabend Decl.") at ¶ 9; Ex. 1, Dkt. Nos. 50,  
 9 50-1. This included Plaintiff's Request No. 1 ("Request No. 1"), which asks Defendant to produce  
 10 "all documents, records, deposition transcripts, discovery responses, and data produced or  
 11 provided by [State Farm]" in *Vogt v. State Farm Life Insurance Company*, Case No. 2:16-cv-  
 12 04170-NKL (W.D. Mo.), a nearly identical case filed by undersigned counsel against Defendant  
 13 in the Western District of Missouri. *Id.* On July 13, 2020, Defendant responded to the discovery  
 14 request, objecting to Request No. 1, in part, as follows:

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

16 To the extent information produced in *Vogt* is relevant to the claims and defenses  
 17 in this case and proportional to the needs of the case, State Farm will produce that  
 18 information. State Farm objects to this request on the grounds that it is not  
 19 reasonably specific to the claims and defenses in this matter. This case is distinct  
 20 from *Vogt*, and not all information relevant to that matter is necessarily relevant to  
 21 this case. State Farm further objects that information regarding Missouri  
 22 policyholders, produced in *Vogt* pursuant to that Court's protective order, is private  
 23 financial information of State Farm's policyholders that has no relevance to the  
 24 claims and issues in this case. State Farm further objects that information produced  
 in *Vogt* contained sensitive, competitively-valuable business information regarding  
 State Farm's life insurance business. The information was produced in *Vogt*  
 pursuant to an appropriate protective order and should not be produced here until  
 an appropriate protective order is entered that preserves the confidentiality of this  
 information. State Farm also objects to the production of the information produced  
 in *Vogt* on the basis of the attorney-client privilege and the attorney work product  
 to the extent applicable.

1                    *Id.* at ¶ 10; Ex. 2 at 12–13, Dkt. No. 50-2. Defendant further stated in its response that “the  
 2 prior rulings of another court do not control here” and concluded it was “withholding documents  
 3 pursuant to these objections.” *Id.*

4                    The parties attempted in good faith to resolve this issue without court intervention and have  
 5 both submitted declarations describing their meetings and communications. Feierabend Decl. at  
 6 ¶¶ 11, 12; Declaration of Jeremy A. Root (“Root Decl.”) at ¶ 2, Dkt. No. 52. Unable to reach an  
 7 agreement, Plaintiff filed the instant motion on August 6, 2020.

### 8                    **III.    LEGAL STANDARD**

9                    Federal Rule of Civil Procedure (“FRCP”) 26(b)(1) provides that “[p]arties may obtain  
 10 discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and  
 11 proportional to the needs of the case, considering the importance of the issues at stake in the action,  
 12 the amount in controversy, the parties’ relative access to relevant information, the parties’  
 13 resources, the importance of the discovery in resolving the issues, and whether the burden or  
 14 expense of the proposed discovery outweighs its likely benefit.” FED. R. CIV. P. 26(b)(1); *see also*  
 15 *Surfvivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005).

16                    Where the response to discovery is unsatisfactory, the party seeking discovery may file a  
 17 motion to compel discovery. FED. R. CIV. P. 37(a)(1); *see also Lim v. Franciscan Health Systems*,  
 18 2006 WL 3544605, at \*1 (W.D. Wash. Dec. 8, 2006). The Court has broad discretion to decide  
 19 whether to compel disclosure of discovery. *See Phillips ex rel. Estates of Byrd v. General Motors*  
 20 *Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). The Ninth Circuit has held that there are “liberal  
 21 discovery principles” under the Federal Rules and that the party resisting discovery thus carries a  
 22 “heavy burden of showing” why a request for discovery should be denied. *Blankenship v. Hearst*  
 23 *Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); *see also Gilson v. Evergreen at Talbot Rd. L.L.C.*, No.  
 24

1 04-02126, 2005 WL 3841864, at \*2 (W.D. Wash. Nov. 1, 2005).

2 **IV. DISCUSSION**

3 Defendant objects to Plaintiff's Motion to Compel on two grounds. First, it charges that  
 4 Plaintiff's Request No. 1 is not "tailored to the claims, defenses and needs of [this] particular case"  
 5 and "improperly seeks to 'piggyback' on other litigation" discovery produced in the Western  
 6 District of Missouri case *Vogt v. State Farm Life Ins. Co.*" Def.'s Resp. to Mot. to Compel at 1.  
 7 Defendant next claims that "Plaintiff's request for *all* documents produced by State Farm in *Vogt*  
 8 does not satisfy his discovery obligation to identify specifically the categories of documents he  
 9 seeks." *Id.* at 7. Defendant identifies categories of documents from the *Vogt* production that it  
 10 considers inappropriate in this case. *Id.* at 7–9. The Court will address each argument in turn.

11 **A. The *Vogt* Production is Relevant**

12 Defendant urges this Court to deny the motion to compel contending that Plaintiff fails to  
 13 show that all the materials from the *Vogt* production are relevant to the instant litigation. Def.'s  
 14 Resp. to Mot. to Compel at 3. Defendant alleges that Plaintiff's request "is a textbook example of  
 15 an improper 'cloned' request." *Id.* at 4. Plaintiff counters that the *Vogt* discovery materials are  
 16 relevant because *Vogt* is a virtually identical class action involving the same defendant, the same  
 17 policy form, the same claims, and the same alleged wrongful conduct alleged in the instant action.  
 18 Pl.'s Mot. to Compel at 8–9.

19 The Court finds Defendant's "cloned request" argument unpersuasive. All of the cases  
 20 cited by Defendant involved pending and prior lawsuits that were factually and legally distinct.  
 21 *See Wollam v. Wright Med. Grp., Inc.*, No. 10-03104, 2011 WL 1899774, at \*1–2 (D. Colo. May  
 22 18, 2011) (request for documents produced in all legal actions taken worldwide over the last decade  
 23 against the defendant with only a single similarity of its allegedly defective product); *see also*  
 24 *Midwest Gas Services, Inc. v. Indiana. Gas Co.*, No. 99-690, 2000 WL 760700, at \*1 (S.D. Ind.

1 Mar. 7, 2000) (request for all documents ever received or produced to the United States  
 2 Department of Justice, where there was no showing that the documents were relevant or related to  
 3 the pending case).

4 In contrast, the instant lawsuit and *Vogt* have significant factual and legal overlap, with  
 5 both suits against the same defendant asserting almost identical claims based on the same alleged  
 6 misconduct. Both the instant suit and *Vogt* assert identical claims of breach of contract,  
 7 conversion, and declaratory and injunctive relief based on Defendant's alleged wrongful conduct  
 8 in overcharging his account and loading unauthorized factors into his plan's rates in a manner  
 9 inconsistent with the terms of his policy.<sup>1</sup> *See Vogt*, 963 F.3d at 761. Thus, the cases are  
 10 sufficiently related to not constitute "cloned requests." *See Bally v. State Farm Life Ins. Co.*, No.  
 11 18-04954 (N.D. Cal. Feb. 22, 2019), Dkt. No. 59 (rejecting State Farm's argument that identical  
 12 action filed by undersigned counsel was a "cloned discovery request" and ruling that "applicable  
 13 discovery and testimony obtained in *Vogt* [...] may be used in this litigation"). Given the  
 14 similarities in the *Vogt* and instant case, the Court concludes that Plaintiff has met his burden in  
 15 showing that the *Vogt* production is relevant.

16 **B. Plaintiff's Request is Not Overbroad or Unduly Burdensome**

17 Defendant's second argument, that Plaintiff's request is overbroad, also fails because  
 18 producing the *Vogt* materials will not be unduly burdensome or costly. *See FED. R. CIV. P.*  
 19 26(b)(2)(B) ("On motion to compel discovery [...]. the party from whom discovery is sought must  
 20 show that the information is not reasonably accessible because of undue burden or cost.").

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 23 <sup>1</sup> Plaintiff brings one additional claim against Defendant under state law for engaging in unfair and deceptive practices  
 24 in violation of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.* *See SAC* at ¶¶ 79–84. The other  
 difference between the instant litigation and *Vogt* is that *Vogt* sought to certify a class made up only of individuals who  
 purchased Defendant's Form 94030 in Missouri, rather than in Washington state. *Id.* at ¶ 5.

1 Plaintiff seeks to compel the same documents already produced to undersigned counsel  
2 and already in Plaintiff counsel's possession. The Court expects that the parties will enter into a  
3 stipulated protective order as they have previously done in *Vogt* and *Bally* to address concerns  
4 regarding the disclosure and use of any confidential or proprietary information produced in this  
5 case.

6 Defendant identifies "categories of documents from the *Vogt* production that [it considers]  
7 inappropriate in this case." Def.'s Resp. to Mot. to Compel at 7. The Court finds these objections  
8 meritless. First, Defendant objects to producing materials related to Form 86040, the predecessor  
9 policy to Form 94030. *Id.* The Court notes that the earlier form contains the same disputed policy  
10 language as in Form 94030 and is therefore relevant to this lawsuit. Next, Defendant objects that  
11 the *Vogt* materials relating to its communications with state regulators nationwide are "irrelevant  
12 to the issues in *this case*" because this suit involves a putative Washington-only state class. *Id.* at  
13 7–8. The Court disagrees; Defendant's disclosures and responses to inquiries about Form 94030's  
14 common design, development, and pricing are relevant regardless of the regulator that received  
15 Defendant's communications. Defendant also notes that "substantial data in the *Vogt* litigation  
16 pertains exclusively to policyholders in Missouri." *Id.* at 8. The Court notes that these documents  
17 will be protected under the parties' anticipated protective order, as it was in the *Vogt* case.  
18 Similarly, the protective order should safeguard Defendant's corporate model documents and any  
19 other confidential and proprietary materials disclosed by the company.<sup>2</sup>

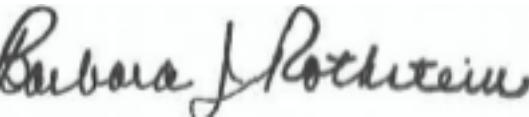
20 **V. CONCLUSION**

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23 <sup>2</sup> The Court notes that Defendant also objects to privileged documents inadvertently produced in *Vogt* and  
24 subsequently clawed back, *see* Def.'s Resp. to Mot. to Compel at 8; however, these documents are no longer part of  
the *Vogt* production.

1 For the foregoing reasons, the Court hereby GRANTS Plaintiff's Motion to Compel  
2 Discovery, Dkt. No. 49, and orders as follows:

3 (1) Defendant shall produce all the responsive materials to Plaintiff's Request No. 1; and  
4 (2) The parties shall agree to a protective order similar to that in *Vogt* and *Bally*; and  
5 present it to the Court no later than 10 days from this order.

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7 DATED this 15<sup>th</sup> day of September, 2020.



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9 BARBARA J. ROTHSTEIN  
10 UNITED STATES DISTRICT JUDGE  
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